



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

**[Docket No. 210723-0150]**

**RTID 0648-XB923**

#### **Fisheries of the Northeastern United States; Northeast Multispecies Fishery;**

#### **Common Pool Fishery and Other Measures for Fishing Year 2022**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; possession and trip limit implementation.

**SUMMARY:** This action implements measures for the Northeast multispecies common pool fishery and other measures under Regional Administrator authority for the 2022 fishing year. This action is necessary to ensure that the Northeast multispecies common pool fishery may achieve the optimum yield for the relevant stocks, while controlling catch to help prevent in-season closures or quota overages. These measures include possession and trip limits, the allocation of zero trips into the Closed Area II Yellowtail Flounder/Haddock Special Access Program for common pool vessels to target yellowtail flounder, and the closure of the Regular B Days-at-Sea Program.

**DATES:** Effective at 0001 hours on May 1, 2022, through April 30, 2023.

**FOR FURTHER INFORMATION CONTACT:** Spencer Talmage, Fishery Management Specialist, 978-281-9232.

**SUPPLEMENTARY INFORMATION:** The Northeast Multispecies Fishery Management Plan (FMP) regulations allow the Regional Administrator to implement possession limits for the common pool fishery, the U.S./Canada Management Area, and Special Management Programs. This action implements a number of these management

measures for the 2022 fishing year, effective May 1, 2022.

### **Common Pool Trip Limits**

Regulations at § 648.86(o) allow the Regional Administrator to implement or adjust a per-Day-at-Sea (DAS) possession limit and/or a maximum trip limit in order to prevent exceeding the common pool sub-annual catch limit (sub-ACL) in that fishing year. The possession and trip limits implemented for the start of the 2022 fishing year are included in Tables 1 and 2 below. These possession and trip limits were developed based on the common pool sub-ACLs set by Framework Adjustment 61 to the Northeast Multispecies FMP (86 FR 40353, July 27, 2021) that will be in effect on May 1, 2022. We considered preliminary 2022 sector rosters, expected common pool participation, and common pool fishing activity in previous fishing years. Additionally, during its December 2021 meeting, the New England Fishery Management Council adopted Framework Adjustment 63 to the Northeast Multispecies FMP, which, if approved, would modify the common pool sub-ACLs for several stocks. We are working to publish a proposed rule to request comment on Framework Adjustment 63. When developing the trip limits in this action, we took into account Council recommended sub-ACLs that may be implemented in Framework 63 to put in place trip limits on May 1, 2022, that would not result in the common pool exceeding any sub-ACLs or trimester total allowable catch (TAC). Based on this information, we project that these adjustments will facilitate optimized harvest of the common pool quotas, while preventing early trimester closures, and preventing catch from exceeding the 2022 fishing year sub-ACLs.

For Handgear A and Handgear B vessels, possession and trip limits for Georges Bank (GB) and Gulf of Maine (GOM) cod are tied to the possession and trip limits for groundfish DAS vessels. The default cod trip limit is 300 lb (136 kg) for Handgear A vessels and 75 lb (34 kg) for Handgear B vessels. If the GOM or GB cod limit for vessels fishing on a groundfish DAS drops below 300 lb (136 kg), then the respective

Handgear A cod trip limit must be reduced to the same limit. Similarly, the Handgear B trip limit must be adjusted proportionally to the DAS limit (rounded up to the nearest 25 lb (11 kg)). In accordance with this process, the Handgear A and Handgear B possession and trip limits for GB and GOM cod are as listed below in Table 2.

Vessels with a Small Vessel category permit can possess up to 300 lb (136 kg) of cod, haddock, and yellowtail flounder, combined, per trip. Additionally, for these vessels, the trip limit for all stocks is equal to the landing limits per DAS applicable to multispecies DAS vessels. This is necessary to ensure that the trip limit applicable to the Small Vessel category permit is consistent with the trip limits for other common pool vessels, as described above.

Weekly quota monitoring reports for the common pool fishery can be found on our website at:

<https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/h/nemultispecies.html>. We will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, vessel monitoring system catch reports, and other available information and, if necessary, we will make additional adjustments to common pool management measures.

**Table 1 -- 2022 Fishing Year Common Pool Possession and Trip Limits**

Stock	2022 Trip Limit
GB Cod (outside Eastern U.S./Canada Area)	100 lb (45.4 kg) per DAS, up to 200 lb (90.7 kg) per trip
GB Cod (inside Eastern U.S./Canada Area)	
GB Cod [Closed Area II Yellowtail Flounder/Haddock SAP (for targeting haddock)]	500 lb (226.8 kg) per trip
GOM Cod	200 lb (90.7 kg) per DAS, up to 400 lb (181.4 kg) per trip
GB Haddock	100,000 lb (45,359.2 kg) per trip
GOM Haddock	2,000 lb (907.2 kg) per DAS, up to 4,000 lb (1,814.4 kg) per trip
GB Yellowtail Flounder	100 lb (45.4 kg) per trip
Southern New England/Mid-Atlantic (SNE/MA) Yellowtail Flounder	100 lb (45.4 kg) per DAS, up to 200 lb (90.7 kg) per trip
Cape Cod (CC)/GOM Yellowtail Flounder	1,000 lb (453.6 kg) per DAS, up to 2,000 lb (907.2 kg) per trip
American plaice	2,000 lb (907.2 kg) per DAS, up to 4,000 lb

	(1,814.4 kg) per trip
Witch Flounder	1,500 lb (680.4 kg) per trip
GB Winter Flounder	250 lb (113.4 kg) per trip
GOM Winter Flounder	1,000 lb (453.6 kg) per trip
SNE/MA Winter Flounder	2,000 lb (907.2 kg) per DAS, up to 4,000 lb (1,814.4 kg) per trip
Redfish	Unlimited
White hake	1,500 lb (680.4 kg) per trip
Pollock	Unlimited
Atlantic Halibut	1 fish per trip
Windowpane Flounder	Possession Prohibited
Ocean Pout	
Atlantic Wolffish	

**Note:** Minimum fish sizes apply for many groundfish species, but are not included in this rule. Please see 50 CFR 648.83 for applicable minimum fish sizes.

**Table 2 -- 2022 Fishing Year Cod Trip Limits for Handgear A, Handgear B, and Small Vessel Category Permits**

Permit	Initial 2022 Trip Limit
Handgear A GOM Cod	200 lb (90.7 kg) per trip
Handgear A GB Cod	100 lb (45.4 kg kg) per trip
Handgear B GOM Cod	25 lb (11 kg) per trip
Handgear B GB Cod	25 lb (11 kg) per trip
Small Vessel Category	300 lb (136.1 kg) of cod, haddock, and yellowtail flounder combined; additionally, vessels are limited to the common pool DAS limit for all stocks.

Table 3 includes the initial common pool trimester TACs for fishing year 2022. These trimester TACs are based on preliminary sector rosters. However, individual permit holders have until the end of the 2021 fishing year (April 30, 2022) to drop out of a sector and fish in the common pool fishery for the 2022 fishing year. Therefore, it is possible that the sector and common pool catch limits, including the trimester TACs, may change due to changes in sector rosters. If changes to sector rosters occur, updated catch limits and/or possession and trip limits will be announced as soon as possible in the 2022 fishing year to reflect the final sector rosters as of May 1, 2022. We are working to publish a proposed rule to request comment on updated 2022 specifications as recommended by the New England Fishery Management Council in Framework Adjustment 63. If approved, Framework Adjustment 63 would make additional changes to common pool sub-ACLs. There could be additional changes to common pool trimester TACs and possession and trip limits as a result.

**Table 3 -- Initial Common Pool Trimester Total Allowable Catches for Fishing Year 2022 (mt, live weight)**

Stock	Trimester Total Allowable Catches		
	Trimester 1	Trimester 2	Trimester 3
GB Cod	7.6	9.2	10.3
GOM Cod	3.6	2.4	1.3
GB Haddock	348.2	425.6	515.9
GOM Haddock	36.2	34.9	63.0
GB Yellowtail Flounder	0.6	0.9	1.5
SNE/MA Yellowtail Flounder	0.7	0.9	1.6
CC/GOM Yellowtail Flounder	15.0	6.9	4.5
American Plaice	48.1	5.2	11.7
Witch Flounder	18.0	6.5	8.2
GB Winter Flounder	1.1	3.3	9.2
GOM Winter Flounder	7.6	7.8	5.1
Redfish	22.2	27.5	39.1
White Hake	7.3	6.0	6.0
Pollock	29.9	37.4	39.6

#### **Closed Area II Yellowtail Flounder/Haddock Special Access Program**

The regulations at § 648.85(b)(3)(vii) allow the Regional Administrator to determine the total number of common pool trips that may be declared into the Closed Area II Yellowtail Flounder/Haddock Special Access Program (SAP) to target yellowtail flounder. This action allocates zero trips for common pool vessels to target yellowtail flounder within the Closed Area II Yellowtail Flounder/Haddock SAP for fishing year 2022. As a result, this SAP is only open to target haddock, from August 1, 2022, through January 31, 2023. Northeast multispecies vessels fishing in the SAP must fish with a haddock separator trawl, a Ruhle trawl, or hook gear. Vessels may not fish in this SAP using flounder trawl nets.

The Regional Administrator may determine the allocation of the total number of trips into the Closed Area II Yellowtail Flounder/Haddock SAP based on several criteria, including the GB yellowtail flounder catch limit and the amount of GB yellowtail

flounder caught outside of the SAP. Allocating trips to target yellowtail flounder in the Closed Area II Yellowtail Flounder/Haddock SAP is discretionary if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit, for a total catch of 2,250,000 lb (1,020,600 kg). This calculation considers projected catch from all vessels from the area outside the SAP. Based on the fishing year 2022 GB yellowtail flounder groundfish sub-ACL implemented by Framework Adjustment 61 of 141,095.8 lb (64,000 kg), there is insufficient GB yellowtail flounder to allocate any trips to the SAP. Further, given the low GB yellowtail flounder catch limit, catch rates outside of this SAP are more than adequate to fully harvest the 2022 GB yellowtail flounder allocation.

If approved, Framework Adjustment 63 would implement a 2022 GB yellowtail flounder sub-ACL that is 73,634 lb (33,399.82 kg) greater than the Framework 61 sub-ACL, which amounts to fewer than 5 additional trips with a 15,000-lb (6,804-kg) trip limit in the SAP. As a result, we do not expect that the final rule implementing Framework 63 would allocate trips to the SAP to target yellowtail flounder.

### **Regular B DAS Program**

The regulations at § 648.85(b)(6)(vi) authorize the Regional Administrator to close the Regular B DAS program by prohibiting the use of Regular B DAS when the continuation of the program would undermine the achievement of the objectives of the Northeast Multispecies FMP or the Regular B DAS Program. One reason for terminating the program is an inability to constrain common pool catches to the Incidental Catch TACs.

Framework Adjustment 61 implemented Common Pool Incidental Catch TACs for the Regular B DAS Program for the 2022 fishing year (Table 4). These TACs are further divided into Quarterly Incidental Catch TACs to be monitored and managed during each calendar quarter.

**Table 4 -- Fishing year Total and Quarterly Incidental Catch TACs for the Regular B DAS Program (mt, live weight)**

Stock	Total Incidental Catch TAC	Quarterly Incidental Catch TAC			
	2022	1st Quarter (13 percent)	2nd Quarter (29 percent)	3rd Quarter (29 percent)	4th Quarter (29 percent)
GB Cod	0.27	0.04	0.08	0.08	0.08
GOM Cod	0.07	0.01	0.02	0.02	0.02
GB Yellowtail Flounder	0.03	0.00	0.01	0.01	0.01
CC/GOM Yellowtail Flounder	0.26	0.03	0.08	0.08	0.08
American Plaice	3.25	0.42	0.94	0.94	0.94
Witch Flounder	1.63	0.21	0.47	0.47	0.47
SNE/MA Winter Flounder	0.34	0.04	0.10	0.10	0.10

Given that the Incidental Catch TACs allocated to the Regular B DAS Program for several stocks are very small, in-season management of the Regular B DAS Program is likely to be extremely difficult and impractical. Implementation of an in-season action to close the Regular B DAS Program once a Quarterly Incidental Catch TAC for a stock has been reached would not be possible to complete quickly enough to prevent further catch of that stock.

As a result, it is unlikely that we can effectively limit catch to the Incidental Catch TACs during fishing year 2022, and project that continuation of the program would undermine the achievement of the objectives of the Northeast Multispecies FMP and the



Regular B DAS Program. The Regular B DAS Program will be closed and use of Regular B DAS is prohibited for the 2022 fishing year, through April 30, 2023. This applies to all vessels issued a limited access Northeast multispecies permit.

### **Classification**

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the 30-day delayed effectiveness period because it would be contrary to the public interest and is unnecessary.

Regulations at § 648.86(o) authorize the Regional Administrator to adjust the Northeast multispecies possession and trip limits for common pool vessels in order to prevent the overharvest or underharvest of the pertinent common pool quotas. This action sets the initial common pool possession and trip limits on May 1, 2022, for the 2022 fishing year. The possession and trip limits implemented through this action help to ensure that the Northeast multispecies common pool fishery may achieve the optimum yield for the relevant stocks, while controlling catch to help prevent in-season closures or quota overages. Delay of this action would leave the common pool fishery with the possession and trip limits found in § 648.86, which are too high to control catch. This would likely lead to early closure of a trimester and quota overages. Any overage of the quota for either of the first two trimesters must be deducted from the Trimester 3 quota, which could substantially disrupt the trimester structure and intent to distribute the fishery across the entire fishing year. An overage reduction in Trimester 3 would further reduce fishing opportunities for common pool vessels and likely result in early closure of Trimester 3. Additionally, any overage of the annual quota would be deducted from common pool's quota for the next fishing year, to the detriment of this stock and

diminishing fishing opportunities in the following fishing year.

The regulations at § 648.85(b)(3)(vii) require that the Regional Administrator announce the total number of allowed trips by common pool vessels that may be declared into the Closed Area II Yellowtail Flounder/Haddock SAP on or about June 1. We have included the announcement in this in-season action to meet this regulatory requirement. Doing so ensures that the fishing industry has sufficient notice in order to plan their activities in the new fishing year. This action occurs annually, and industry participants are accustomed to it and expect its timely implementation. Given the low quota for GB yellowtail flounder in recent years, no trips have been allocated to this SAP from fishing year 2010 to fishing year 2021.

The regulations at § 648.85(b)(6)(vi) authorize the Regional Administrator to close the Regular B DAS program by prohibiting the use of Regular B DAS when the continuation of the program would undermine the achievement of the objectives of the Northeast Multispecies FMP or the Regular B DAS Program. The Regular B DAS program closure implemented through this action will prevent an overage of the Incidental Catch TACs. Delay of this action would provide vessel owners an opportunity to participate in the Regular B DAS Program, but participation and catch in the program may cause the allocation to be exceeded. In addition to the adverse consequences that are against the public interest, delaying implementation of this action for prior notice and opportunity for comment is unnecessary. These processes were established with prior notice and opportunity for comment. They were established to provide for regular and timely implementation of necessary catch limits to avoid adverse economic or ecological consequences that are not in the public interest. Further, adjusting catch limits in accordance with current conditions and limits provides maximum fishing opportunities practicable that avoid excess catch that may result in overfishing. Fishing industry participants and other stakeholders expect these actions to occur annually and inseason.

They are regular occurrences that participants have become accustomed to. For the reasons above, delay of this action for additional prior notice and the opportunity for public comment and the 30-day delayed effectiveness period are unnecessary and against the public interest because they would undermine management objectives of the FMP and cause unnecessary negative economic impacts to the common pool fishery.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 18, 2022

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Kelly Denit,

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National Marine Fisheries Service.

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